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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

VIVIAN SENTIRMAY et al., Plaintiffs and Respondents, v. GABRIELLA DORA SENTIRMAY, Defendant and Appellant.	B216594 (Los Angeles County Super. Ct. No. LC084003)

APPEAL from an order of the Superior Court of Los Angeles County, Richard A. Adler, Judge. Affirmed.

Law Offices of Gabor Szabo and Gabor Szabo for Defendant and Appellant.

Friedman Law Offices, Andrew Friedman and Ari Friedman for Plaintiffs and Respondents.

Gabriella Dora Sentirmay (Dori)[1] appeals from the trial court's order denying her motion to vacate entry of default and the ensuing default judgment entered against her on the complaint filed by her in-laws, Vivian and Julius Sentirmay. Dori contends the trial court abused its discretion by declining to find that her default was the result of mistake, surprise, inadvertence or excusable neglect under Code of Civil Procedure section 473, subdivision (b).[2] We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On January 7, 2009 Vivian and Julius filed this breach of contract action against their daughter-in-law, Dori, alleging Dori and their son, Scott,[3] had failed to repay the sum of $114,320.49 the elder Sentirmays had lent to Dori and Scott in December 2007 to allow the younger couple to pay off their debts. According to the complaint the loan was to be repaid through monthly payments of $850, with the balance to be paid if Dori and Scott sold, refinanced or acquired a line of credit on their home.

As further alleged in the complaint, Dori and Scott made five monthly payments on the loan between January and May 2008 but failed to make any further payments. Vivian called Dori on several occasions and left messages asking her to resume the monthly payments. In August 2008 Dori and Scott sold their home, thereby making the entire loan due; and Scott moved to Richmond, Virginia. In October 2008, after receiving no response to their inquiries about the loan, Vivian and Julius sent a letter to Dori and Scott informing them of Dori's failure to respond to Vivian's efforts to contact her and reminding them the loan "had not been forgotten." Again, the elder Sentirmays received no response. In a conversation with Dori in December 2008, Vivian told Dori that, unless she agreed to make the $850 monthly payments, she and Julius would be

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1 Because the parties share the same last name, we refer to them by their first names for convenience and clarity. (*Cruz v. Superior Court* (2004) 120 Cal.App.4th 175, 188, fn. 13.)

2 Statutory references are to the Code of Civil Procedure.

3 Although the complaint alleges the money was loaned to both Dori and Scott, Vivian and Julius did not name Scott as a defendant.

forced to sue Dori. After learning Dori was moving to Virginia to live closer to Scott, Vivian and Julius filed the complaint on January 7, 2009 and served Dori the next day. Dori failed to file a timely response to the complaint. On February 19, 2009 the clerk entered Dori's default.

On March 25, 2009 Dori, through newly retained counsel, filed a motion for relief from entry of default. In a declaration attached to the motion, Dori stated her in-laws had handed her an envelope (containing service of process) when she "was in the process of moving out from my former residence . . . ." She also stated she told her husband about the envelope and "he indicated . . . he would talk to his parents and everything would be taken care of and not to worry about any legal papers as it was a family affair." After her husband informed her he had been unable to resolve the matter with his parents, she contacted a lawyer and was "surprised" to learn her response to the complaint was late. She was also "surprised" to learn that she had been named in the lawsuit and that, while her husband had been negotiating with his parents, they caused her default to be entered. Further, "it was my mistake that I believed . . . my husband would settle this vengeful lawsuit, once my in-laws learned that they cannot force me with this lawsuit to move back to California, nor that we would not go forward with our amicable and friendly divorce."

In opposition to Dori's motion, Vivian and Julius submitted their own declaration, accompanied by the declaration of the process server who had served Dori with the complaint. According to these declarations, on January 8, 2009 Vivian, Julius and the process server went to the apartment where Dori had been living with her mother. The process server gave Dori's mother a copy of the summons and complaint and told her he had given her a complaint that required a response within 30 days. Dori's mother agreed to give Dori the papers and told the Sentirmays Dori was in the process of moving from the apartment. The Sentirmays saw a friend of Dori's leave the apartment complex in a rented truck, which the Sentirmays followed with the process server. After trying to evade the Sentirmays, the driver of the truck pulled up to a police station. There, the Sentirmays explained they were attempting to serve a lawsuit. One of the police officers

called Dori and arranged for the elder Sentirmays to meet her at a nearby fast food restaurant. At the restaurant the process server handed Dori the summons and complaint and told her she was being sued. According to the Sentirmays and the process server, Dori responded, "Okay. See you in court."

At a hearing on April 15, 2009 the trial court denied Dori's motion, finding that she had made an insufficient showing of excusable neglect in failing to respond to the complaint. Dori filed a renewed motion for relief from default, which contained a declaration from Scott, stating his father had promised not to take Dori's default if they could agree on a payment schedule and sign a new agreement. According to Scott, his father tricked him by telling him Dori would have time to answer the complaint if they could not reach an agreement. Scott gave up the effort to work out a settlement when his father's demands became "more and more unreasonable." In response, Julius submitted a declaration denying Scott's account of settlement discussions, stating he had had only two conversations with Scott since the filing of the lawsuit and Scott had claimed not to know about Dori's earlier declaration, in which she had claimed Scott would take care of the matter for her. Moreover, Scott and Julius never discussed extending the time for Dori to respond to the lawsuit.

The court denied the renewed motion on the ground it failed to comply with section 1008[4] and failed yet again to demonstrate excusable neglect under section 473, subdivision (b). On May 19, 2009 the court entered a default judgment in favor of Vivian and Julius in the amount of $116,570.54.

DISCUSSION

1. *The Trial Court Did Not Abuse Its Discretion in Denying Dori's Motion for Relief from Default*

   a. *The Standard of Review*

A motion to vacate a default and set aside a judgment "'"is addressed to the sound discretion of the trial court, and in the absence of a clear showing of abuse . . . the

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[4] Section 1008, subdivision (a), requires a party seeking reconsideration of a court ruling to show "new or different facts, circumstances or law."

exercise of that discretion will not be disturbed on appeal.'" [Citations.] The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason." (*Strathvale Holdings v. E.B.H.* (2005) 126 Cal.App.4th 1241, 1249.)

If a ruling turns on a disputed issue of fact, the trial court's express and implied factual determinations are not disturbed on appeal if supported by substantial evidence. (*Strathvale Holdings v. E.B.H., supra,* 126 Cal.App.4th at p. 1250.) "When a finding of fact is attacked on the ground that there is no substantial evidence to sustain it, the power of an appellate court *begins* and *ends* with the determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the finding of fact. [Citations.] [¶] When two or more inferences can reasonably be deduced from the facts, a reviewing court is without power to substitute its deductions for those of the trial court." (*Green Trees Enterprises, Inc. v. Palm Springs Alpine Estates, Inc.* (1967) 66 Cal.2d 782, 784-785; see also *Griffith Co. v. San Diego College for Women* (1955) 45 Cal.2d 501, 508 ["[w]hen an issue is tried on affidavits, the rule on appeal is that those affidavits favoring the contention of the prevailing party establish not only the facts stated therein but also all facts which reasonably may be inferred therefrom, and where there is a substantial conflict in the facts stated, a determination of the controverted facts by the trial court will not be disturbed"]; accord, *Capo for Better Representation v. Kelley* (2008) 158 Cal.App.4th 1455, 1462.)

b. *Dori failed to show excusable neglect for her default*

Section 473, subdivision (b), authorizes the trial court to relieve a party from a default judgment or dismissal entered as a result of the party's or her attorney's mistake, inadvertence, surprise or neglect. It provides for both mandatory and discretionary relief. Mandatory relief is available "whenever an application for relief is made no more than six months after entry of judgment, is in proper form, and is accompanied by an attorney's sworn affidavit attesting to his or her mistake, inadvertence, surprise, or neglect." (§ 473, subd. (b).) When, as here, there is no attorney affidavit of fault, discretionary relief alone is available to a party who has defaulted: "The court may, upon any terms as may be just, relieve a party or his or her legal representative from a

judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect." (§ 473, subd. (b).) A party seeking relief under section 473 bears the burden of proof. (*In re Marriage of Kieturakis* (2006) 138 Cal.App.4th 56, 80.)

Dori contends her conduct meets the standard of excusable neglect because she believed the dispute to be a family matter more appropriately handled by her estranged husband. Dori contends she relied on Scott, who told her he would resolve the issue with his parents, and she and Scott were duped by his parents into believing they would not seek her default without giving her an opportunity to respond.

"Where a default is entered because defendant has relied upon a codefendant or other interested party to defend, the question is whether the defendant was reasonably justified under the circumstances in his reliance or whether his neglect to attend to the matter was inexcusable." (*Weitz v. Yankosky* (1966) 63 Cal.2d 849, 856; see also *Stiles v. Wallis* (1983) 147 Cal.App.3d 1143, 1148 [although defendant believed his employer would provide a defense, he "failed to present evidence which would cause a reasonable person to sustain such a belief"].) "With regard to whether the circumstances warranted reliance by the defendant on a third party, the efforts made by the defendant to obtain a defense by the third party are, of course, relevant." (*Weitz,* at p. 856.) "The defendant cannot reasonably rely on the third party's continued assurances in light of contrary information showing the third party is providing no defense." (*Cruz v. Fagor America, Inc.* (2007) 146 Cal.App.4th 488, 507.)

The trial court did not err in concluding Dori had failed to demonstrate her reliance on Scott was reasonable under the circumstances. Dori had been the recipient of numerous telephone calls from her in-laws alerting her to their intent to file a lawsuit if she did not resume payments on the loan. Vivian, Julius and the process server each attested to the fact Dori was told she was being served with a lawsuit and she acknowledged this fact by vowing to "see [them] in court." As the trial court recognized, had she opened the envelope she would have known her response was due within 30 days of service. She also failed to establish Julius, whom she claimed was in negotiations to

settle the debt with Scott, had ever agreed to extend the time to respond to the complaint. Instead, she simply insisted the dispute was a family matter that did not involve her.

On these facts the trial court did not abuse of discretion in finding Dori had not demonstrated reasonable reliance on Scott to resolve the matter. As another court recently explained, "'[i]t is the duty of every party desiring to resist an action or to participate in a judicial proceeding to take timely and adequate steps to retain counsel or to act in his own person to avoid an undesirable judgment. Unless in arranging for his defense he shows that he has exercised such reasonable diligence as a man of ordinary prudence usually bestows upon important business his motion for relief under section 473 will be denied. [Citation.] Courts neither act as guardians for incompetent parties nor for those who are grossly careless of their own affairs. . . . The only occasion for the application of section 473 is where a party is unexpectedly placed in a situation to his injury without fault or negligence of his own and against which ordinary prudence could not have guarded.'" (*Hearn v. Howard* (2009) 177 Cal.App.4th 1193, 1206.)

c. *The trial court did not err in denying Dori's motion for reconsideration*

Even though not denominated a motion for reconsideration, the trial court properly concluded its authority to consider the merits of Dori's renewed motion to set aside the default was circumscribed by the requirements of section 1008: "This section specifies the court's jurisdiction with regard to applications for reconsideration of its orders and renewals of previous motions, and applies to all applications to reconsider any order of a judge or court, or for the renewal of a previous motion, whether the order deciding the previous matter or motion is interim or final. No application to reconsider any order or for the renewal of a previous motion may be considered by any judge or court unless made according to this section." (§ 1008, subd. (e).)

Section 1008 generally requires that any motion for reconsideration be based "upon new or different facts, circumstances, or law." (§ 1008, subds. (a), (b); see *Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1098.) Even if new or different facts are provided with the renewed motion, however, the moving party must provide the trial court with a satisfactory explanation as to why he or she failed to produce the evidence at

an earlier time. (*Glade v. Glade* (1995) 38 Cal.App.4th 1441, 1457 ["The party seeking reconsideration must provide not just new evidence or different facts, but a satisfactory explanation for the failure to produce it at an earlier time"]; accord, *Mink v. Superior Court* (1992) 2 Cal.App.4th 1338, 1342.)

Dori's renewed motion was plainly subject to the constraints of section 1008, and she made no effort to explain to the court why Scott's declaration could not have been provided in support of the earlier motion. Moreover, jurisdictional constraints aside, the renewed motion confirmed the accuracy of the trial court's earlier assessment of Dori's truthfulness. In response to Scott's assertion he had been tricked into believing his parents would allow Dori additional time to respond to the complaint, Julius's declaration stated Scott, whom Julius telephoned after Dori's initial motion had been filed, told Julius he had not yet seen the declaration and did not know what Julius was talking about. In other words, Dori's earlier statement Scott had been in negotiations with his father was flatly contradicted by Julius's account of his conversation with Scott. The trial court's decision to credit Julius's statements, and not Dori's or Scott's, was within its discretion; and its findings of fact are supported by substantial evidence. Accordingly, there was no error.

2. *Dori Has Waived or Forfeited Her Other Contentions*

Dori lists a number of other procedural "irregularities" she contends demonstrate the unjustness of the trial court's denial of her motion to set aside the default but has utterly failed to support these contentions with argument or legal authority. (See Cal. Rules of Court, rule 8.204(a)(1)(B) [each point in a brief must be supported by argument and, if possible, by citation of authority]; *Gunn v. Mariners Church, Inc.* (2008) 167 Cal.App.4th 206, 218 [argument on appeal deemed forfeited by failure to present factual analysis and legal authority on each point raised]; *Osornio v. Weingarten* (2004) 124 Cal.App.4th 304, 316, fn. 7 ["'[i]ssues do not have a life of their own: if they are not raised or supported by argument or citation to authority, we consider the issues waived'"]; *Dills v. Redwoods Associates, Ltd.* (1994) 28 Cal.App.4th 888, 890, fn. 1 [appellate court "will not develop the appellants' arguments for them"].) Nor has she

demonstrated these arguments were presented to the trial court. (See *Kolani v. Gluska* (1998) 64 Cal.App.4th 402, 412 [failure to raise issue or argument in trial court results in forfeiture of the point on appeal]; *Munro v. Regents of University of California* (1989) 215 Cal.App.3d 977, 988-989 [party may not raise issue on appeal not presented in trial court].)

Accordingly, we need not consider any of these issues further.

DISPOSITION

The order is affirmed. Vivian and Julius Sentirmay are to recover their costs on appeal.

PERLUSS, P. J.

We concur:

ZELON, J.

JACKSON, J.